1642

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: G. G. Schlauder, et al.

Serial No.: 09/468,147

Filed: December 21, 1999

For: METHODS AND COMPOSITIONS FOR DETECTING HEPATITIS E VIRUS

Attorney Docket No.: 6232.US.P1

Examiner: (Not Assigned Yet)

Date: May 7, 2001

Group Art Unit: 1642

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Assistant Commissioner for Patents
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on May 7, 2000

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Signature: Linda K. Powell

TRANSMITTAL LETTER

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Enclosed herewith is a "Response to Restriction Requirement" of G.G. Schlauder *et al.* in the above-identified patent application entitled "METHODS AND COMPOSITIONS FOR DETECTING HEPATITIS E VIRUS".

Also enclosed is a Return Receipt Postcard.

The Commissioner is hereby authorized to charge any patent application or processing fees required under 37 C.F.R. §§1.16 or 1.17 associated with this communication and for which full payment has not been tendered to Deposit Account No. 01-0025. A duplicate copy of this sheet is enclosed.

Respectfully submitted,
G. G. Schlauder, *et al.*

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PATENT

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5/19/01 TBray #9

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RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The following is in response to the Office Action mailed March 5, 2001, in the above-identified application. In the Action, the Examiner restricted Applicants to one of eight designated inventions, namely, the invention of:

(1) Group I (Claims 1, 4-11, 14-20, and 24-26) drawn to methods for detecting the presence of a U.S. type hepatitis E virus (HEV) with a polypeptide binding partner, classified in class 435, subclass 5,

(2) Group II (Claims 1-3, 12, 13, 24, and 26, drawn to methods of detecting the presence of a U.S. type HEV with an antibody binding partner, classified in class 435, subclass 5,

(3) Group III (Claims 1, 21-23, and 27, drawn to methods of detecting U.S. type HEV with a nucleic acid marker, classified in class 435, subclass 6,

(4) Group IV (Claims 28 and 39), drawn to isolated polypeptides and methods of immunization using the polypeptides, classified in class 530, subclass 324 and in subclass 189.1,

(5) Group V (Claims 29-34 and 40), drawn to antibodies which bind HEV polypeptides, classified in class 530, subclass 388.3,

(6) Group 35-38, drawn to isolated HEV nucleic acides, classified in calss 536, subcalss 23.72,

(7) Group VII (Claims 29-31 and 40-42) drawn to methods of immunization using antibodies classified in class 424, subclass 149.1, and

(8) Group VIII (Claims 35, 37, 38, and 43, drawn to methods of immunization

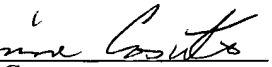
with nucleic acid, classified in class 514, subclass 44.

Applicants hereby elect the invention of Group I and the species designated as SEQ ID NO:91, with traverse, and request modification of the restriction requirement for the reasons set forth below.

Applicants respectfully traverse the restriction requirement as it applies to the inventions designated as Group I and Group II. For a restriction requirement to be properly imposed, two separate criteria must be met: (1) the inventions must be "independent or distinct" as claimed and (2) there must be a serious burden (emphasis added) imposed on the Examiner to examine the invention, in the absence of the restriction requirement. (Please see MPEP 803).

Applicants respectfully submit that part (2) of the above described criteria is not met in the case of the Group I and Group II inventions. Applicants assert that a broad search of the method of Claim 1 unquestionably would uncover the subject matter of Claims 1-3 and 12, 13, 24 and 26. For example, a thorough prior art search for a "method of detecting the presence of a U.S. type Hepatitis E virus (HEV) with a polypeptide binding partner" should reveal a similar method which uses an antibody binding partner, particularly since an antibody falls under the broad category of polypeptide. Conversely, a thorough search of the Group II invention would necessitate a search of polypeptide binding partners. The fact that nearly half of the Group II claims (i.e. Claims 1, 24, and 26) overlap with the Group I claims evidences the common features of the claimed subject matter. Additional evidence of common features is found in the identity of the search categories. Applicants therefore submit that inclusion of the non-overlapping Group II claims (i.e. Claims 2, 3, 12, and 13) in the invention designated as Group I (Claims 1, 4-11, 14-20, and 24-26) fails to impose a serious burden of examination on the Examiner. Accordingly, Applicants request reconsideration and modification of the Restriction Requirement to include Claims 2, 3, 12, and 13 in the invention designated as Group I.

Respectfully submitted,
G. G. Schlauder, *et al.*



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